I now deal with the second charge. It seems to me on the evidence at the close of the case for the prosecution clear that the respondent, *prima facie*, had failed to divulge the information requested under paragraph 2 of the Permanent Secretary's letter of 14th January 1972. The reply to the letter merely gave the reason for not being in a position to furnish the requested information, namely, that the letter was an anonymous one. It is to be observed that the letter in its original form (see Exhibit P10) bears the date "8.1.72" and that it was published on the 12th January 1972 with the omission of the date "8.1.72". It is to be observed also that the letter did not contain a request that it should be published in the *Nanyang Siang Pau*. It follows, in my opinion, that if the respondent desired to publish the letter regulation 5B(1) imposes an obligation on him to verify the names etc. of the writers and to establish that the letter was in fact written by persons who are members of the Singapore Armed Forces. It follows, further, when the respondent published the letter on 12th January 1972 that it must be inferred, *prima facie*, that he had complied with the provisions of regulation 5B(1) and accordingly, *prima facie*, would have the information which was requested by the Permanent Secretary's letter of 14th January 1972. It may well be at the end of the trial when all the evidence (including the defence evidence, if any) is before the trial court that the respondent is entitled to be acquitted on the second charge but, in my judgment, at this stage of the trial the respondent ought to have been called upon to enter on his defence. I therefore set aside the order of acquittal and remit the matter to the trial court for the trial to proceed on the second charge.

Order accordingly.

Solicitors: *Sim Teow Gok & Co.*

RE FRANCIS T. SEOW
THE LAW SOCIETY OF SINGAPORE v. FRANCIS T. SEOW

[O.C.J. (Wee Chong Jin C.J., Winslow and Tan Ah Tah JJ.)
April 30, 1973]

[Singapore — Originating Summons No. 42 of 1973]

Advocate and Solicitor — Improper conduct — Improper letter to dispose of movable property of company with branch in Malaysia — Company subject to winding up in Singapore — Breach of undertaking to Attorney-General — Legal Profession Act (Cap. 217), ss. 84 (2) (b) and 90.

Evidence — Use of tape recording by solicitor — Solicitor not informing other person that conversation was being taped — Knowledge of disciplinary inquiry by Law Society — Weight to be attached to such evidence.

The respondent, an advocate and solicitor commenced practice under the firm name of "Francis T. Seow" in October 1971. Prior to this he was a legal officer in the Singapore Legal Service and held the post of Solicitor-General from 1969 to sometime in September 1971. In March 1972 one Isaac Paul Ratnam, also a former legal officer in the Singapore Legal Service joined his firm as a profit sharing partner. The respondent's firm was instructed by Gemini Chit Fund Corporation Limited, now in liquidation, in connection with certain chit fund matters. Ratnam was the solicitor in charge of all Gemini matters. A director of Gemini was arrested on a charge of criminal breach of trust of moneys entrusted to Gemini. The respondent's firm acted for this director in this criminal matter. The respondent personally appeared in court as counsel for the director in his application for bail pending trial. Sometime later in July 1972, the Minister for Finance, acting under the Chit Fund Act presented a petition for winding up of Gemini. The respondent's firm also acted as solicitors for Gemini in the winding up proceedings. In August 1972, a letter was sent by the respondent's firm to the General Manager of the Kuala Lumpur branch of Gemini. The material parts of the letter related to the disposal of movable property belonging to Gemini in West Malaysia. The letter was prepared by Ratnam and sent out before it was shown to the respondent. The respondent saw a copy of the letter the same afternoon and after reading it made an exclamation mark and a question mark on the copy of the letter. The respondent did not take any further action until several days later when he enquired as to whether Ratnam had taken any steps to inform the other side to ignore the instructions. Sometime in mid August 1972 a police party arrived at the respondent's office armed with a warrant for the arrest of Ratnam and with a search warrant for a search of the respondent's office. The respondent refused to allow the police to search his office. He called the Attorney-General on the telephone and gave his personal undertaking to hand over to the police all books, files and documents relating to Gemini. The Attorney-General relying on the respondent's undertaking instructed the police not to conduct a search of the respondent's firm and no search was conducted. The respondent subsequently relying on his partner, Ratnam, confirmed to the Attorney-General that all files relating to Gemini had been handed over to the police. It was later found that two files relating to Gemini's affairs and two deposit receipts and the seal of Gemini were in the respondent's office.

The matter was referred to a Disciplinary Committee appointed by the Chief Justice. The Disciplinary Committee found that the respondent was guilty of grossly improper conduct in the discharge of his professional duty under section 84 (2) (b) of the Legal Profession Act in failing in his duty to ensure that the letter to Gemini's office in Kuala Lumpur (having regard to its criminal nature, the full import of which was apparent to the respondent), was not countermanded, withdrawn, repudiated or otherwise negatived. The Disciplinary Committee also found the respondent guilty of grossly improper conduct in the discharge of his professional duty under section 84 (2) (b) in giving his undertaking to the Attorney-General so recklessly and irresponsibly. On an application to show cause under section 84 of the Legal Profession Act,

Held: (1) the respondent was not only guilty of an error of judgment in relying on and placing his trust in a partner but also was guilty of improper conduct in the discharge of his professional duty. It was wholly deplorable conduct of him as a man and dishonourable of his profession;

(2) on all the facts and circumstances it was not only gross misjudgment of Ratnam's character but also the gross failure on his part to honour his undertaking to the Attorney-General. A simple and normal step to take was for the respondent to give express orders and directions to every member of his staff to search every room of his office for any relevant files or documents relating to Gemini, but this was not done. It was culpable negligence on the part of the respondent in such circumstances as to amount to grossly improper conduct in the discharge of his profession;

(3) the respondent should be suspended from practice for a period of one year for these serious derelictions.

Observations on use of tape recording by solicitor as supporting evidence in disciplinary proceedings.

ORIGINATING SUMMONS.

L. P. Thean for the applicants.

M. Kempston Q.C. (*Lim Chor Pee* with him) for the respondent.

Wee Chong Jin C.J. (delivering judgment of the court): The respondent, Francis T. Seow, an advocate and solicitor, appears before us to show cause why he should not be dealt with under section 84 of the Legal Profession Act (Chapter 217). The material provisions of section 84 are as follows: —

"84. (1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.

(2) Such due cause may be shown by proof that such person —

(b) has been guilty of... grossly improper conduct in the discharge of his professional duty....

(4) In any proceedings under this Part the court may in addition to the facts of the case take into account the past conduct of the person concerned in order to determine what order should be made".

Before starting private practice under the style or firm name of Francis T. Seow (hereinafter for convenience called "the respondent's firm") on 11th October 1971 the respondent was for about 15 years a legal officer in the Singapore Legal Service and held the post of Solicitor-General from 1st January 1969 to 18th September 1971. In March 1972 another former legal officer, Isaac Paul Ratnam (hereinafter referred to as "Ratnam") joined the respondent's firm as a profit sharing partner with a fixed monthly salary of $1,800 or 10% of the profits, whichever was the greater. Ratnam while in government service served for five years under the respondent in the Attorney-General's Chambers. The respondent had another qualified assistant, Miss Lucia Han, who joined the firm in January 1972.

In late April 1972 the respondent's firm was instructed to act in certain matters for the Gemini Chit Fund Corp. Ltd. (hereinafter referred to as "Gemini"), now in liquidation, whose principal business was that of carrying on the business of chit funds. Prior to the enactment in December 1971 and coming into force on 14th January 1972 of the Chit Fund Act, 1971, the business of carrying on chit funds was not controlled by legislation but by section 4 of that Act no chit fund business could be transacted in Singapore except by a public limited company incorporated in Singapore duly licenced under the Act to conduct chit fund business. The instructions to act were given to Ratnam who thereafter was the solicitor in charge of and who handled practically all Gemini's matters.

It was a "standing order", instituted presumably by the respondent himself, that letters written by the respondent's firm must be circulated first among all the practising solicitors of the firm before they were sent out of the firm. The relevance of this standing order will appear hereinafter.

On 29th July 1972 S. M. Abdul Gaffar, a director and the principal shareholder and V. K. S. Narayanan, the chairman of Gemini were arrested on a charge of criminal breach of trust of moneys entrusted to Gemini and Abdul Gaffar instructed the respondent's firm to act for him in this criminal matter. The instructions were given to Ratnam. Thereafter when these two accused directors of Gemini were produced in court the respondent appeared as counsel for Abdul Gaffar to apply for bail pending trial.

On 31st July 1972 a petition by the Minister for Finance acting under section 53 of the Chit Funds Act, 1971, was presented to the High Court for the winding-up of Gemini on the ground that Gemini had carried on business in contravention of the provisions of the Chit Fund Act, 1971. The petition was served on Gemini the same day and notice of hearing of the petition was advertised in the *Straits Times* newspaper of 1st August 1972 which also contained on its front page in big headlines the caption "Petitions to wind up Gemini and... see Page 9". The respondent's firm also acted as solicitors for Gemini in the winding-up proceedings.

On 3rd August 1972 Ratnam dictated two letters to Miss Shirley Lim, a stenographer attached to him, which he subsequently signed, and handed to a S. F. Retnam, the manager of the Penang branch of Gemini. It would appear that they were dictated and signed in the presence of S. F. Retnam and Mrs. Gaffar, the wife of S. M. Abdul Gaffar. One letter which is the subject matter of the first complaint against the respondent was addressed to the general manager of the Kuala Lumpur branch of Gemini and the other letter was addressed to S. F. Retnam. The contents of the letter to the general manager of the Kuala Lumpur branch are as follows: —

"Dear Sir,

By Hand — Confidential

Atn: Mr. K. K. Kumaran

We act for Mr. Gaffar who has instructed us to dispose off the five cars owned by the company, as well as other movable properties immediately.

In this connection, we have instructions from our clients to appoint Mr. S. Francis Retnam as the agent to effect the aforesaid transactions. Please take proper inventory and acknowledgment prior to handing over these properties to Mr. Retnam and keep them confidentially in your control. At a later date, when the transactions have been completed, please let me have these documents. You may want to note that Mr. Retnam has given specific instructions as to the disposal of the funds realized from these properties and as such, he has to be allowed custody thereof.

We have been instructed to inform you that Mr. Retnam has been authorized by Mr. Gaffar to proceed to form a Malaysian based Gemini Chit-Fund Corporation Limited and to discontinue operations as a branch of the Singapore company. These instructions are equally applicable to Gemini Travel Service.

Please co-operate with Mr. Retnam and do the needful to effect Mr. Gaffar's instructions.

Yours faithfully,

Sd: Francis T. Seow."

The letters were prepared and handed by Ratnam to S. F. Retnam on the morning of 3rd August 1972. The standing order that all office letters must be circulated before despatch was not complied with by Miss Shirley Lim because Retnam insisted that these two letters be despatched at once. After lunch Miss Shirley Lim clipped the office copies of these letters to the relevant file and handed them to Miss Irene Fong, the firm's librarian cum-accountant, for circulation. Miss Fong subsequently showed the copies to the respondent that same afternoon. The respondent after reading them made an exclamation mark and a question mark on the copy of the letter to Kuala Lumpur. The respondent, according to Miss Fong, asked for the originals and was told that they had

already left the office. On being told this and after reading the copies the respondent appeared unhappy and remarked "Such letters should not go out of the office". He also told Miss Fong that he would discuss them later with Ratnam. As Ratnam was not in the office and as he was busy when Ratnam was available he did not see Ratnam till the morning of the 4th August when he told Ratnam to write "to the other side to ignore the instructions" contained in the letter to Kuala Lumpur.

Thereafter from the 4th to the 11th August the respondent did not enquire from anyone in his firm whether or not Ratnam had complied with his instructions to write "to the other side" except that he said that he made "one query after the 4th August". Then on 11th August his firm received a letter which Miss Lucia Han brought to his attention. It was a letter marked "Private and Confidential Attn. Mr. Paul Isaac Ratnam" dated 9th August from an Ipoh firm of solicitors the contents of which were most improper and were written on behalf of S. F. Retnam. The letter also relates to the disposal of the movable properties of Gemini situate in West Malaysia. The respondent said that two days after the receipt of the letter of the 9th August he asked Ratnam if Ratnam had attended to his instructions relating to Ratnam's letter of the 3rd August and Ratnam replied that he had. Having obtained that reply from Ratnam the respondent "did not follow-up because of the two debentures". The two debentures, one for $10,000,000 and one for $600,000 were matters which the respondent was personally handling for other clients and which kept him busy during July and August 1972. However, as regards the letter received on 11th August from S. F. Retnam's Ipoh solicitors the respondent immediately directed Ratnam to put up a draft dissociating his firm "with this type of thing" and when Ratnam placed a draft before him, he himself prepared a more suitable reply which was immediately typed and then signed by Ratnam and despatched on the same day.

At 8.45 on the morning of 15th August 1972 a police party arrived at the office of the respondent's firm armed with a warrant for the arrest of Ratnam and with a search warrant to search the office of the respondent's firm as well as the residences of Ratnam and the respondent for "all files, account books and other documents relating to Gemini Chit-Fund Corporation Ltd. and its related Companies". Ratnam after seeing the two warrants telephoned to the respondent at his home and asked the officer in charge of the police party, Deputy Superintendent Ng Leng Hua, to await the arrival of the respondent. The respondent, on arrival, refused to allow the police to search the office. He called the Attorney-General on the telephone and gave his personal undertaking to hand over to the police all books, files and documents relating to the affairs of Gemini which were in his office, except his brief and added that there was no need for the police to make a search in the office of his firm. The Attorney-General relying on the respondent's undertaking instructed Deputy Superintendent Ng Leng Hua not to conduct a search of the respondent's firm and no search was conducted. About two hours later a bundle, about 10 inches high, of files was handed by Ratnam to the police who then left with Ratnam in their custody. During the whole of that period of time the police party, Ratnam and the respondent were in Ratnam's room and most of the time was spent discussing the legality of the search warrant. Furthermore, during those two hours the respondent did not himself conduct any search or instruct any of his office staff to conduct a search or make any enquiries of any member of his staff as to whether there were any files relating to Gemini's affairs kept outside of Ratnam's room which is described as "not large, 9½' x 9'." What the respondent did do was to ask several times of Ratnam "are there any more books".

In fact when the police party and Ratnam left the respondent's firm that morning there were in the premises two files relating to Gemini's affairs, two deposit receipts for $21,000 and $44,000 respectively belonging to Gemini and the seal of Gemini. The two deposit receipts were discovered the next day, 16th August, by Miss Irene Fong under the removal part of the cash box and these two documents were on orders of the respondent taken by Ratnam — who was by then on bail — to the Joo Chiat Police Station and handed to a police officer. The two files and the seal were recovered by the police in the following circumstances. At about 6.30 p.m. on 15th August Ratnam telephoned a Mohamed Rashad, then the accountant of Gemini, at Rashad's house and asked Rashad to go to his office the next morning to collect two files in connection with Gemini and also told Rashad that he had been arrested. The next morning, 16th August, Ratnam again telephoned to Rashad at 8.15 a.m. telling Rashad to go to his office to collect the two files. Rashad immediately contacted a police officer who instructed him to go to Ratnam's office as arranged and the police officer would wait for him at the five-foot way of Ratnam's office. Rashad saw Ratnam at Ratnam's office, *i.e.* at the respondent's firm, and saw Ratnam go out of his own room and return shortly thereafter with two files which he then handed to Rashad. Rashad then left and met the police officer and as they were walking along the road an office boy of the respondent's firm came up to them and handed Rashad the seal of Gemini stating that Ratnam had asked him to hand it to Rashad. One of these two files contained a list of subscribers and the respective amounts subscribed by them on chit funds conducted by Gemini.

One last material fact emerged from the evidence of the respondent given in chief before the Disciplinary Committee. It is a most revealing piece of evidence and we reproduce it here. It reads thus: —

"I did not know that there were files of Gemini in the office. The first time I knew was on one afternoon when the girls in the office were agitated. When I came back from lunch from the Imperial Hotel, the girls tried to tell me that Isaac had caused some files of Gemini to be brought to the 3rd room from the front portion because the police were coming to collect them and he wanted to prevent the police from getting them. I sent for Isaac. He explained there were some files he had taken from one or more of Gemini's offices and he did not want the police to have them.

I was very annoyed and displeased. I told him so. I order-

ed those books or files to be brought back to the front portion of the office. They were. Isaac was unhappy about it."

This incident as related by the respondent clearly took place after the two directors of Gemini had been arrested but before the police party went on 15th August to arrest Ratnam and to search the respondent's firm.

On the facts which we have set out in some detail the Disciplinary Committee, appointed by the Chief Justice under section 90 of the Legal Profession Act to hear and investigate two complaints by the Attorney-General against the respondent arising out of these facts, found that the respondent —

(a) was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Act in failing in his duty to ensure that the letter dated 3rd August, having regard to its criminal nature, the full import of which was apparent to the respondent, to at once ensure that the letter should be countermanded, withdrawn, repudiated or otherwise negatived; and

(b) was also guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Act in giving his undertaking to the Attorney-General so recklessly and irresponsibly.

Having regard to these findings the Disciplinary Committee determined that cause of sufficient gravity existed under section 84 of the Act.

Mr. Kempster, counsel for the respondent while accepting the findings of fact challenges the conclusions arrived at by the Disciplinary Committee. He concedes in relation to the complaint regarding the letter of 3rd August that it was a highly improper letter for a solicitor to write on behalf of a client. Mr. Kempster does not dispute that the test of what constitutes "grossly improper conduct in the discharge of his professional duties" in section 84 of the Act is conduct which is dishonourable to him as a man and dishonourable in his profession. He submits, however, that on the facts as found by the Disciplinary Committee their conclusions were not warranted by the facts and that on the facts the respondent had done nothing that could be said to be dishonourable of him as a man or of his profession. He contends the Disciplinary Committee, in relation to the first complaint, had failed to consider that the respondent and Ratnam were partners and that partnerships are by law presumed to be based on mutual trust and confidence of each partner in the integrity of every other partner. His submission is that as the Disciplinary Committee did not appear to have considered the fact that the respondent and Ratnam were partners their finding of "grossly improper conduct" was not justified. He also submits that it cannot be dishonourable on the part of the respondent as a man or in his profession however unwisely, to entrust the responsibility of correcting a wrong to his own partner who had actually committed the wrong and that at worst the respondent had been guilty of an error of judgment, not meriting disciplinary action, by placing his trust in Ratnam in all the circumstances of the matter.

Many cases were cited to us by Mr. Kempster in support of his submissions but we do not consider it necessary to deal with them in this judgment because the facts and circumstances of the present case are entirely different and because the principles to be applied are not in dispute. We are unanimously of the opinion that the Disciplinary Committee arrived at the right conclusion on the first charge. Let us look at the facts and circumstances when the respondent first became aware of the contents of the letter of the 3rd August 1972 to the general manager of the Kuala Lumpur branch of Gemini. It was a highly improper letter for any solicitor to write having regard to the criminal nature of its contents. It was handed over to a person who was not the addressee. The standing order that all letters of the firm must be circulated prior to despatch had been disobeyed by Ratnam. The respondent knew that Abdul Gaffar and Narayanan had been charged with criminal breach of trust of moneys entrusted to Gemini and appeared in court to apply for bail for Abdul Gaffar. The letter emanated from the firm which bears his own name. His immediate reaction was to appear unhappy, to remark that such a letter should not go out of his office and to tell Miss Irene Fong that he would discuss it with Ratnam later. He did not see Ratnam that same afternoon because he was busy over other clients' matters and because Ratnam happened to be out of the office then. He put an exclamation and question mark on the copy of the letter. He saw Ratnam the following morning and all he did was to tell Ratnam that such a letter should not have been written, that it should have been seen by him before it left the office and that Ratnam "had better write to the other side to ignore those instructions". Thereafter he recalled that a couple of days later he asked Ratnam if he had attended to the matter and he accepted Ratnam's reply that it had been but he did not "follow up" subsequently because he was busy over two debentures. It is to be observed that it would have been perfectly simple and not time consuming at all for the respondent to call for the relevant file to be assured that Ratnam had in fact written and to discover how Ratnam had dealt with the matter. It is to be observed also that, had he given subsequent thought to the matter, as he should have done, the standing order of the firm as regards outgoing letters being circulated would have disclosed to him that from the 4th August onwards Ratnam had in fact not attended to the matter.

On all these facts and circumstances any solicitor, acting honourably as a man and in his profession, would in our judgment have taken it upon himself to write at once — or might even have spoken over the telephone — to the general manager of the Kuala Lumpur branch of Gemini stating, *inter alia*, the serious consequences of adhering to the instructions contained in the offending letter. At the very least, a solicitor in the situation of the respondent would have requested his erring partner and/or the partner's stenographer to let him have a look at the proposed remedial letter before it was despatched. In our judgment the respondent was not only guilty of an error of judgment in relying on and placing his trust in a partner but was also guilty of grossly improper conduct in the discharge of his professional duties. It was wholly

deplorable conduct dishonourable of him as a man and dishonourable of his profession.

As regards the second charge the respondent after giving his undertaking to the Attorney-General spent two hours discussing the validity of the search warrant and himself conducted no search, caused no search to be conducted outside of Ratnam's room and made no enquiries of anyone other than Ratnam whether there were any relevant files or documents which were kept outside of Ratnam's room. In fact the respondent did nothing at all to ensure, by all the means within his power and control, that he honoured his undertaking. It is to be observed that before he gave the undertaking he was already aware that Ratnam had in fact sometime earlier "caused some files to be brought to the 3rd room from the front portion because the police were coming to collect them and he wanted to prevent the police from getting them".

In our opinion on all the facts and circumstances it was not only gross misjudgment of Ratnam's character as is submitted to us by Mr. Kempster but it was also a gross failure on the part of the respondent to honour his undertaking to the Attorney-General. In our opinion the simple, obvious and normal step to take was for the respondent to give express orders and directions to every member of his staff to search every room of the office for any relevant files or documents. As events turned out that simple, obvious and normal step, if taken, would have resulted in the finding of the two files, the two deposit receipts and the seal of Gemini in the office of the respondent's firm. In our judgment it was culpable negligence on the part of the respondent in such circumstances as to amount to grossly improper conduct in the discharge of his profession.

Before we consider the penalty we should impose we should refer to one piece of evidence which was relied on by the respondent. It is a tape-recording by the respondent without Ratnam's knowledge of a telephone conversation he had with Ratnam after he had been asked for an explanation by the Inquiry Committee of the Law Society. We wish to make a general observation on the use of a tape-recording by a solicitor as supporting evidence in disciplinary proceedings against him. We deprecate it unless the solicitor informs the other person concerned that the conversation is being recorded on tape. In the present case this was not done. Moreover, the recording was made after the respondent had been informed that the Law Society was investigating into his conduct and accordingly, in our opinion, the weight to be attached to such evidence, if any, is minimal.

We take the view that these are serious dereliction on the part of the respondent for which an appropriate penalty would be suspension from practice for a period of one year and we so order. The period of suspension shall commence from the date of this order. In addition we order that the respondent pay all the costs before the Disciplinary Committee and before this court, including all the costs of the Law Society in these proceedings.

Order accordingly.

Solicitors: *Chor Pee & Hin Hiong.*

MALAYSIAN REPORTS

LAM SHES TONG & ORS. v. LAM KEE YING SDN. BHD.

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.) June 27, 1972]

[Kuala Lumpur — Federal Court Civil Appeal No. 7 of 1972]

Landlord and Tenant — Lease — Covenant not to assign, underlet or part with possession of premises — Lessee allowing company of which he is Chairman of Board of Directors use of premises — Whether breach of covenant — Equitable relief against forfeiture — National Land Code, s. 237.

This was an appeal against an order for possession of premises leased by the respondents to the first appellant. It was alleged that the first appellant as lessee had broken a covenant not to assign, underlet or part with the possession of the premises without the consent of the respondents. The first appellant originally carried on business on the premises in a partnership called Lian Joo Company but subsequently the partnership was converted into a limited company (the second appellants) of which the first appellant became the principal shareholder and managing director. The premises were occupied by the second appellants.

Held, allowing the appeal: (1) there was in fact no assignment of the lease in this case as the company was let into occupation of the premises on the same footing as the firm, by leave and licence of the lessee and there was therefore no breach of covenant which rendered the lease liable to forfeiture;

(2) in any event in the circumstances of the case, the first appellant was entitled to treat the company as his *alter ego* and was entitled to equitable relief against forfeiture as provided under section 237 of the National Land Code.

Cases referred to:

(1) *Salomon* v. *Salomon & Company Ltd.*, [1897] A.C. 22.

(2) *Tunstall* v. *Steigmann* [1962] 2 Q.B. 593, 600.

(3) *In re Westbourne Galleries Ltd.* [1972] 2 W.L.R. 1289, 1297.

(4) *Chaplin* v. *Smith* [1926] 1 K.B. 198.

(5) *Gian Singh* v. *Devraj Nahar* [1965] 2 M.L.J. 12.

FEDERAL COURT.

R. R. Chelliah (*Kam Woon Wah* with him) for the appellants.

J. L. Tan for the respondents.

Ong C.J.: The respondents were plaintiffs in an action claiming possession of leased premises from the first appellant, as lessee, for breach of a covenant not to assign, underlet or part with the possession of the demised premises without the consent of the respondents first obtained. The second appellants, a company incorporated in Malaysia and carrying on business at the premises, were sued for trespass. We allowed this appeal and now state in full the grounds of our decision.

The demised premises, comprising the entire ground floor of a shophouse No. 32 Jalan Silang, Kuala Lumpur, were leased originally by Lam Kee Ying and Lam Yoo Choo, then the registered proprietors, to Lam Shes Tong, trading as Lian Joo Company, for a term of 25 years from May 1, 1964 at a yearly rent of $6,000 payable monthly in advance at the rate of $500 per month. The lease contained the following relevant covenants by the lessee in clause (1): —

"(g) Not to assign underlet or part with the possession of the demised premises or any part thereof without the prior